HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.Nos.4596 of 2003

Dated 8th day of August, 2007

Between:

G.Ravi Kumar ..
Petitioner

And

The Prohibition & Excise Superintendent,
Nellore ..
Respondent

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the respondent in issuing Notice dated 5.3.2003 demanding the petitioner to pay a differential fee of Rs.1,79,000/-, as arbitrary and illegal.

The petitioner asserts that on an application made by him for transfer of IL 24 licence belonging to N. Babu for the Excise year 2000-2001 in his favour, the respondent called upon him to pay a sum of Rs.9.00 lakhs towards licence fee apart from a sum of Rs.90,000/- for effecting transfer of the licence. The petitioner paid Rs.90,000/- towards fee for transfer of licence, and accordingly, licence was transferred in his favour. Subsequently, the petitioner also paid licence fees of Rs.9,00,000/- for the Excise year 2000-2001 in three instalments. Now, his grievance is that the respondent issued the impugned Notice alleging that there had been a shortfall in collecting fee for transfer of licence for the year 1999-2000 and called upon him to pay the differential fee of Rs.1,79,000/-, failing which, action would be initiated under Section 31(1)(b) of A.P. Excise Act.

Though a detailed counter affidavit is filed on behalf of the respondent the factual aspect is nowhere controverted in it.

The only contention put forth by the learned counsel for the petitioner is that the impugned Notice, which is in the nature of an order demanding the petitioner to pay the differential fee, was not preceded with any Show Cause Notice calling for his explanation, as such, the action of the respondent is in utter violation of principles of natural justice.

Of course, it is stated in the counter that the petitioner, without exhausting the remedy of appeal before the Commissioner, has filed this writ petition. However, as the impugned Notice, which is in the nature of an order demanding the petitioner to pay the differential fee for inclusion and exclusion of a partner, was not preceded with any Show Cause Notice calling for his explanation, this Court is not inclined to direct the petitioner to approach the appellate authority.

In the result, this writ petition is allowed and the impugned Notice dated 5.3.2003 is set aside and the respondent-Prohibition and Excise Superintendent is directed to issue a Show Cause Notice to the petitioner calling for his explanation, and the respondent, after considering the objections that may be filed by the petitioner, may pass appropriate orders in accordance with law. No costs.

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08.08.2007

bcj